

December 21, 1999

To: Environmental Health Managers
District Directors
Virginia Tech Contract Soil Scientists
AOSE/PE
Other Soil Consultants

From: E. Anne Peterson, M.D., M.P.H.
State Health Commissioner

Subject: GMP #103: Amendments to GMP #100

GMP #100 implemented significant changes in the way the Virginia Department of Health (VDH) interacted with the soil consulting and professional engineering community. Four months of experience with the program suggest that several areas could be improved. Rather than revoke and reissue GMP #100, an interim policy, this policy is intended to fine-tune and supercede selected elements of GMP #100.

Page 2 of 56, Scope of Policy

One of the more sensitive areas encountered implementing GMP #100 is the interaction between the policy and local ordinances. GMP #100 states, "Local ordinances regarding onsite wastewater systems are not affected by this policy unless a locality indicates in writing that it desires the local health department to apply the provisions of this policy to its local ordinances."

GMP #100 applies to *all* applications received by the Department and to all determinations made regarding compliance with the Board of Health's regulations, whether or not there is a local ordinance and regardless of the provisions of any ordinance. GMP #100 is the Board of Health's (VDH's) implementation of its regulations. Therefore, field checks of AOSE/PE submittals are not required prior to issuing an approval. Further, deemed approval and time limits for processing applications also apply to AOSE/PE submittals. The *only* locality that is exempt from the provisions of the *Code* relating to AOSE/PE approvals is the locality that has entered into a contract with the Board of Health pursuant to Chapter 678 of the 1994 Acts of Assembly.

If a local government has an ordinance that requires someone to physically set foot on property to perform an evaluation when a proposal has been submitted by an AOSE/PE in accordance with GMP #100, it is the local government's responsibility to determine who that person will be. That person will not be an agent of the Commissioner because the Commissioner's determination is made via the provisions of the *Code* through GMP #100. A local government cannot compel VDH to evaluate a site (prior to approval) that has been certified by an AOSE/PE. The Board of Health's regulations, and hence any decisions regarding the suitability of sites thereunder, are to be implemented using GMP #100. Local governments that have such ordinances will have to deal with the inevitable situation where a site or subdivision proposal has been found, via GMP #100, to comply with Board of Health regulations, but has not been determined to comply with some provision of a local ordinance.

If a local government has an ordinance that imposes requirements beyond those of the Board of Health's regulations (i.e., 100% reserve area for all sites) it is the local government's responsibility to implement that ordinance. One way that the local government may choose to implement the ordinance is via GMP #100. This is the "opt-in" provision contained in GMP #100. Presumably there are other ways a local government might choose to implement the provisions of such an ordinance, but we would encourage them to opt-in so as to reduce confusion. A local government that decides not to opt-in to the GMP #100 procedure will be setting up the potentially confusing situation in which applications may be approved under the Board of Health's regulations (either via proper submittal by AOSE/PE and level 1 review or via "deemed approval") but not approved under a more restrictive county ordinance. This will most likely lead to delays in processing applications, confusion, and exceeding the time limits provided in the *Code*.

Page 7 of 56, Item A.1

GMP #100 describes three types of applications: bare applications, applications with AOSE/PE documentation, and applications with non-AOSE/PE documentation. The documentation requirements for AOSE/PEs and non-AOSE/PEs are identical. Bare applications are presumed by GMP #100 to be submitted with no supporting documentation.

Effective immediately *and for the duration of the interim policy (GMP #100)*, non-conforming consulting work may be submitted by an AOSE/PE or non-AOSE/PE with a bare application, provided the site and soil evaluation was completed before July 1, 1999. Applications submitted with non-conforming work shall be processed and evaluated in the same manner as bare applications. Non-conforming reports are by

definition incomplete and may only be used to supplement the site evaluation information conducted by the Department. Non-conforming work shall not be subject to “deemed approval”.

Page 14 of 56, Item C.5

Part II, item C.5 prohibits the use of abbreviations. When describing soil color, the Munsell color chip (7.5 YR 5/6 for example) is not considered to be an abbreviation for the color strong brown. Abbreviations such as “St. Br.” are appropriate when taking field notes. When submitting a soil report to the Department, either the color chip equivalent (7.5 YR 5/6) or the full color description (strong brown) should be reported. The use of standardized abbreviations will be considered during the adoption of the final AOSE regulations.

Page 17 of 56, Item A.1.

GMP #100 provides for the waiver of fees if an applicant perfects a denied application within 15 days. The intent of this section was to eliminate processing delays caused by incomplete applications. By denying the incomplete application the Department makes an appropriate decision based on the information available. By allowing 15 days to supply the missing information, the Department provides a mechanism to avoid a second application fee.

The Division has received numerous comments that applicants often need more than 15 days to secure the services necessary to complete an application. For instance, it may not be possible to arrange for a backhoe to complete the evaluation of a stony or rocky site or to have a property line survey completed within 15 days. Therefore, effective immediately, an applicant will be given 90 days to perfect an application without being required to pay a new fee.

VDH employees are reminded that the denial letter for the incomplete application **must** be sent by certified mail within 15 days of receipt of the initial application. Unless a denial has been issued, the application will not have been completed within 15 days and the provisions of “deemed approval” will apply to those applications for residential development with AOSE/PE documentation.

Page 15 of 56, Item C.6.b and Appendix 16

GMP #100, in subsection C.6.b and in Appendix 16, establishes requirements for subdivision plats including scale and original topography. The policy recites information contained in the *Sewage Handling and Disposal Regulations*. Appendix 16 may be read to require a plat scale of 1"=30' or larger and 2 ft. contour intervals for all subdivisions. In some cases this will result in plats of immense proportions and the topography, if required for an entire subdivision, would be prohibitively expensive. GMP #100 was not written to create new platting or topography requirements not already contained in the *Regulations*.

Appendix L in the *Regulations* contains **suggested** scales and contour intervals for various lot sizes (i.e., not simply a single recommendation as suggested by Appendix 16 of the policy). Subdivisions developed under GMP #100 should continue to use the full range of scales and contour shown in Appendix L. Since these are recommendations, other scales and contour intervals may be used with the concurrence of the local health department and local planning staff.

Appendix 12

The next to last paragraph of Appendix 12 discusses how to file for an appeal of a denial based on an incomplete application. On page 23 of GMP #100, under the heading "Appeals of Denials" the policy states that incomplete applications cannot be appealed until the application is made complete. Therefore, the next to last paragraph of Appendix 12 should be deleted.